



Federal Communications Commission
Washington, D.C. 20554

DA 07-3792
August 31, 2007

Michael E. Carosella
QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, CA 92121

Re: WPZA236, Washington, DC-Baltimore, MD
ULS File No. 0003093241

Dear Mr. Carosella,

On June 28, 2007, you filed an FCC Form 601 application for modification of station WPZA236, seeking authorization to operate on TV Channel 55 in the Washington, D.C.-Baltimore, MD area.¹ Your application incorporates broadcaster consent, pursuant to section 27.60(b)(1)(iv) of the Commission's rules.² This rule section permits a 700 MHz Band licensee to obtain the written concurrence of a co-channel or adjacent channel TV/DTV broadcaster, whereby the incumbent broadcaster consents to accept higher levels of interference than the rule otherwise permits, subject to Commission approval.³

Your application includes a copy of a consent agreement between QUALCOMM Incorporated ("QUALCOMM") and NEXSTAR Broadcasting, Inc. ("NEXSTAR"), licensee of WHAG-DT, channel 55, in Hagerstown, MD. In the agreement, NEXSTAR has agreed to accept additional potential interference to the population in the noise limited service contour of WHAG-DT's construction permit (BMPCDT-20021203ACX). We note that this interference represents the total amount of interference that WHAG-DT will experience from QUALCOMM's proposed operations in the Washington, D.C.-Baltimore, MD area, as well as other previously or concurrently authorized QUALCOMM facilities, and that NEXSTAR's consent covers QUALCOMM's operations in all contributing markets.⁴ QUALCOMM will operate in Washington, D.C.-Baltimore, MD from multiple sites.

¹ The Commission placed the application on public notice. *See* Wireless Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Report No. 3304 at 6 (rel. July 18, 2007). No petitions have been filed against the application.

² *See* 47 C.F.R. § 27.60(b)(1)(iv).

³ This approval process involves an analysis by the Media Bureau, under delegated authority, to determine whether grant of the application is in the public interest. *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845 (2000) (basis for public interest analysis of Lower 700 MHz consent agreements); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022 (2002) (framework for public interest analysis of Lower 700 MHz "band-clearing" agreements) ("*Lower 700 MHz Report and Order*").

⁴ The Commission previously granted QUALCOMM's requests to operate in the areas of New York, New York, Philadelphia, Pennsylvania, and Norfolk/Richmond, Virginia, with NEXSTAR's concurrence. *See Michael E. Carosella*, 22 FCC Rcd 10146 (2007).

Your application also includes a copy of a consent agreement between QUALCOMM and Baltimore (WNUV-TV) Licensee, Inc. (“Baltimore Licensee”), licensee of WNUV(TV), channel 54, Baltimore, MD, and QUALCOMM and Commonwealth Public Broadcasting (“Commonwealth”), licensee of noncommercial educational television station WNVC(TV), channel *56, Fairfax, Virginia. In these agreements, Baltimore Licensee has agreed to accept potential interference to 6.82% of the population in the Grade B contour of WNUV(TV)’s licensed facilities (BLCT-19890914KF) and Commonwealth has agreed to accept potential interference to 5.66% of the population in the Grade B contour of WNVC(TV)’s licensed facilities (BLET-19830525KF). We note that these levels of interference represent the total amount of interference the stations will experience from QUALCOMM’s operations in the Washington, D.C.-Baltimore, MD area.

For the reasons discussed below, we find that grant of the application is in the public interest.⁵ First, our approval of the application will allow QUALCOMM to deploy its MediaFLO (“forward link only”) technology, a “mediacast” service capable of delivering many channels of multimedia content to third generation (“3G”) wireless phones. According to QUALCOMM, which holds licenses for Channel 55 (Block D in the Lower 700 MHz Band) covering the entire nation, MediaFLO initially will provide up to fifteen live streaming video program channels, numerous video “clip cast” channels from which subscribers can choose video clips for viewing on-demand, and numerous audio channels.⁶ QUALCOMM states that MediaFLO will be available at “mass market” prices for most of the nation’s over 194 million mobile phone customers, and that it will spur the development of new content and new technologies.⁷ QUALCOMM also intends that the network will carry local programming and core public interest program content such as breaking news, weather, and public affairs, as well as maintain network capability to disseminate emergency alert information, in both visual (including textual) and auditory form. QUALCOMM further states that its MediaFLO technology offers distinct efficiency and cost advantages in delivering content to a large mobile subscriber base, as compared to cellular and higher-frequency based systems. Moreover, as QUALCOMM notes, MediaFLO will be affordable, readily available and will stimulate new development on a large scale within the emerging technology of mobile video.⁸ Given that QUALCOMM’s business plan calls for an investment of \$800 million, grant of this application will contribute to the growth of the American economy.⁹

While the application proposes an increase in the interference already approved to WHAG-DT, we find that the same factors relied upon in the prior grant letters involving this station justify a grant of this latest application. As the Divisions previously noted, WHAG(TV) is not one of the “top four” stations in its market, nor is it the sole station licensed to Hagerstown. In addition, all of the affected area will continue to be well served by at least four and as many as 43 analog and digital television stations, and 99.98% of the population in the area of agreed-upon interference will receive five or more services. While WHAG(TV) is an NBC affiliate, almost the entire loss area will continue to receive service from

⁵ With respect to any stations receiving interference for which consent is not provided, we note that Qualcomm’s proposed operations are in accordance with the terms of the Commission’s Order granted October 13, 2006. *See* Qualcomm Incorporated Petition for Declaratory Ruling, *Order*, 21 FCC Rcd 11683 (2006).

⁶ QUALCOMM Attachment to application for modification of Station WPZA238, ULS File No. 0002395142 at 5.

⁷ *Id.*

⁸ QUALCOMM Attachment at 5, 6.

⁹ QUALCOMM Attachment at 6.

other NBC affiliates. Only an additional 698 people who live within the Washington, D.C. DMA will not be able to receive an NBC DTV service after MediaFLO service is expanded pursuant to grant of this application.¹⁰ This will be the case, however, only until the DTV transition ends on February 17, 2009, or earlier, when NEXSTAR commences operations on its assigned in-core DTV channel for post-transition use. We also note that the cable and/or ADS penetration rate in the Washington, D.C. DMA is 91.3%.

With respect to WNUV(TV), a CW affiliate, it is not the sole station licensed to Baltimore and is not one of the “top four” stations in its market. WNUV-DT covers the entire area of agreed-upon interference so that no viewers will lose access to the local programming aired on Baltimore Licensee’s station, and a total of seven other CW affiliates provide analog service to portions of the loss area. In addition, almost the entire area of agreed-upon service lies outside the Baltimore DMA, and this area is served by at least 22 other TV or DTV stations. With respect to WNVC(TV), while it is the only noncommercial educational station licensed to Fairfax, Virginia,¹¹ the area of interference is served by at least 12 other TV or DTV stations, and portions of the loss area are served by 11 other noncommercial educational TV or DTV stations. Only 7,571 people who live within the area of agreed-upon interference will not receive noncommercial educational television service after MediaFLO service is expanded pursuant to grant of this application, but this will be the case only until the DTV transition ends on February 17, 2009. Moreover, WNVC(TV)’s programming will be available to the majority of these people via cable or other program delivery systems.

Accordingly, we believe that the public interest will be served by a grant of QUALCOMM’s application, conditioned upon operating within the technical parameters specified in the application, and in accordance with the NEXSTAR, Baltimore Licensee, and Commonwealth Agreements. Any changes to the technical parameters of the proposed facilities that will result in levels of interference greater than those agreed to in the preceding agreements referenced herein, or that result in any additional interference under the thresholds established in the Commission’s Qualcomm Order, will require separate Commission approval.

Sincerely,

Barbara A. Kreisman, Chief
Video Division
Media Bureau

Roger S. Noel, Chief
Mobility Division
Wireless Telecommunications Bureau

¹⁰ See *Michael E. Carosella*, 22 FCC Rcd 2352, 2353 (2007)

¹¹ Noncommercial educational television stations are not rated by Nielson.